

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CHARLES MITCHELL,
Plaintiff

vs

AMERICAN CAMPUS COMMUNITIES
SERVICES, INC., et al.,
Defendants

Case No. 1:12-cv-543

Black, J.
Litkovitz, M.J.

REPORT AND RECOMMENDATION

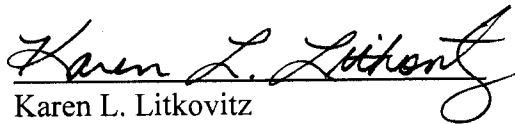
This matter is before the Court on defendant Cindi Smith's motion to dismiss for failure to state a claim upon which relief can be granted (Doc. 4), to which plaintiff Charles Mitchell has not responded. For the reasons that follow, the undersigned recommends that this action be dismissed with prejudice as to defendant Cindi Smith for plaintiff's failure to prosecute and to obey the Orders of this Court.

Plaintiff initiated this action pro se in the Butler County Court of Common Pleas alleging age discrimination in employment against defendants American Campus Communities and Cindi Smith (Regional Manager). (Doc. 5). On July 16, 2012, defendants removed the action to this federal court. (Doc. 1). Defendant Cindi Smith filed a motion to dismiss in this matter on July 16, 2012. (Doc. 4). On August 22, 2012, the Court ordered plaintiff Mitchell to show cause, in writing and within fifteen days, why the Court should not dismiss plaintiff's complaint as related to defendant Cindi Smith for lack of prosecution. (Doc. 7). The Show Cause Order, which was sent by certified mail, was returned by the United States Postal Service with acknowledgment of service executed and signed for by plaintiff on August 23, 2012. (Doc. 8). To date, more than fifteen days later, plaintiff Mitchell has not responded to the Show Cause Order or to defendant Cindi Smith's pending motion to dismiss.

District courts have the inherent power to *sua sponte* dismiss civil actions for want of prosecution to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962). *See also Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991). Failure of a party to respond to an order of the Court warrants invocation of the Court’s inherent power. *See* Fed. R. Civ. P. 41(b).

Accordingly, the undersigned **RECOMMENDS** that plaintiff’s complaint be **DISMISSED** with prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute as to defendant Cindi Smith, and that defendant Cindi Smith’s motion to dismiss (Doc. 4) be **GRANTED**.

Date: 9/14/12


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE TO THE PARTIES REGARDING FILING OF OBJECTIONS TO THIS R&R

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to these proposed findings and recommendations within **FOURTEEN DAYS** after being served with this Report and Recommendation ("R&R"). Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days (excluding intervening Saturdays, Sundays, and legal holidays) because this R&R is being served by mail. That period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. If the R&R is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

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